

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELLE NGUYEN, *et al.*,

Plaintiffs,

V.

MERCER ISLAND BOYS BASKETBALL BOOSTER CLUB, *et al.*

Defendants.

CASE NO. 2:23-cv-00855-RSL

ORDER COMPELLING RESPONSES TO SUBPOENAS DUCES TECUM

This matter comes before the Court on “Defendants Boys & Girls Club of King County and Marc Munson’s Motion for Court Order to Compel Production of Documents Pursuant to Subpoenas Duces Tecum.” Dkt. # 86. Plaintiffs refused to stipulate to the disclosure of their medical records, so defendants served notices of intent to issue third-party subpoenas and subpoenas in July 2024. The subpoenas were addressed to Sound Mental Health (Dkt. # 87-5 at 3 regarding A.A.), Multicare Health System c/o Tacoma General Hospital (Dkt. # 87-5 at 10 regarding A.A.), UW Medicine (Dkt. # 87-5 at 16 regarding A.A.), UW Medicine – Billing (Dkt. # 87-5 at 22 regarding A.A.), and Richard Diffenderfer, MD (Dkt. # 87-5 at 29 regarding A.A. and Dkt. # 87-5 at 38 regarding G.A.) Two of the providers, Sound Mental Health and UW Medicine, declined to provide the requested medical records, citing state and/or federal laws that require a court order or patient authorization for the release of records. Dkt. # 87-8. Defendants seek a court order

1 compelling responses from Dr. Diffenderfer, UW Medicine, Multicare Health System,
 2 Swedish Medical Group, Franciscan Medical Group, University Place Pediatrics Group,
 3 and Sound Mental Health. Dkt. # 86 at 1-2.¹

4 Plaintiff Elle Nguyen objects to the subpoenas on the ground that they seek over ten
 5 years of mental health records. Dkt. # 105 at 2. They do not. The six subpoenas listed
 6 above request medical records for hospitalizations or treatments from June 1, 2019, to the
 7 present. Defendants are entitled to these medical records so they can evaluate whether the
 8 injuries plaintiffs allege in this litigation preceded the May 2022 events at issue and the
 9 extent of those injuries. Plaintiff further objects that production of mental health records
 10 “would be a major hassle and expense.” *Id.* The costs associated with the subpoenas are
 11 borne by the party seeking the records and the entity making the production. Plaintiff has
 12 not shown any prejudice or harm that would arise if the providers were ordered to comply
 13 with the subpoenas.

14 Defendants seek an award of the fees and costs incurred in bringing this motion,
 15 apparently to punish plaintiffs for their failure to stipulate to the release of the medical
 16 records. Dkt. # 86 at 4. But the successful motion to compel was directed at the providers
 17 who declined to produce the medical records, not at plaintiffs. The providers’ refusal was
 18 substantially justified given the nature of the disclosures sought and governing law. *See,*
 19 *e.g.*, RCW 70.02.230(2)(c) and (p) (precluding disclosure of mental health records in the
 20 absence of agreement of the patient or a lawful court order). The Court declines to award
 21 fees or costs against either the providers or plaintiffs in these circumstances.

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 25 ¹ Despite the relief requested and defense counsel’s affirmative representation that Swedish Medical Group and
 26 Franciscan Health did not respond to the subpoenas, Dkt. # 87 at ¶ 9, there is no evidence that Swedish, Franciscan
 Health, or University Place Pediatrics Group were ever served with a subpoena, Dkt. # 87-5. Nor is there any evidence
 that subpoenas for plaintiff Elle Nguyen were ever issued or that anyone other than Dr. Diffenderfer received a
 subpoena related to G.A.

For all of the foregoing reasons, defendants' motion to compel (Dkt. # 86) is GRANTED in part. Sound Mental Health, Multicare Health System c/o Tacoma General Hospital, UW Medicine, UW Medicine – Billing , and Dr. Diffenderfer shall produce all documents responsive to the subpoenas set forth in Dkt. # 87-5 within thirty days of the date of this Order. Defendants shall immediately serve a copy of this order and the relevant subpoena on each of the above-listed providers. Defendants' request for an award of fees and costs is DENIED.

Dated this 24th day of October, 2024.

Robert S. Lasnik
Robert S. Lasnik
United States District Judge